
State Water Resources Control Board

April 11, 2025

VIA ELECTRONIC MAIL

TO: Enclosed List of Protestants

DELTA CONVEYANCE PROJECT CHANGE PETITION PROCEEDING – RESPONSE
TO MOTIONS TO CANCEL DEPARTMENT OF WATER RESOURCES’ PETITION
FOR CHANGE OF WATER RIGHT PERMITS 16748, 16479, 16481, AND 16482
PURSUANT TO WATER CODE SECTION 1701.4

This responds to a March 19, 2025 motion to cancel the Department of Water Resources (DWR) water right change petitions associated with the Delta Conveyance Project (DCP).

On January 31, 2025, a group of protestants referred to collectively as the Public Agency Protestants¹ submitted to the State Water Resources Control Board (SWRCB, or Board) Administrative Hearings Office (AHO) a motion to cancel the DCP change petitions. The basis for the motion was DWR’s failure to submit by January 31, 2025, the supplemental information concerning DWR’s historical water use under the water right permits that are the subject of the petitions, as required by the AHO pursuant to Water Code section 1701.3. In response to the motion, the Presiding Hearing Officer noted that the authority to cancel the petitions had not been delegated to the AHO, but in any event, the Presiding Hearing Officer would not recommend that the petitions be canceled in light of DWR’s representation that it was compiling the supplemental information and intended to complete its effort by the end of May. (February 28, 2025 Third Amended Notice of Public Hearing and Procedural Ruling, pp. 9-10.) The Presiding Hearing Officer extended the deadline to submit the supplemental information to May 27, 2025.

¹ The Public Agency Protestants are County of Sacramento, Sacramento County Water Agency, Sacramento Area Sewer District, City of Stockton, Byron-Bethany Irrigation District, County of San Joaquin, County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of Yolo, Local Agencies of the North Delta, North Delta Water Agency, Reclamation District 999, Reclamation District 2060, and Reclamation District 2068.

On March 19, 2025, a different group of protestants referred to collectively as the Protestants² submitted to the State Water Board Members, the Board's Executive Director, and the Chief Deputy Director who oversees water rights a substantially similar motion to cancel the petitions. By letter dated March 20, 2025, the Public Agency Protestants joined in the motion. DWR submitted a response to the motion, which was addressed to the AHO, on April 1, 2025. The motion has been referred to me for a response because the Chief Deputy Director is not serving as an advisor with respect to DWR's change petitions,³ and the authority to cancel water right change petitions for failure to submit supplemental information has been delegated to the Deputy Director for the Division of Water Rights. (State Water Resources Control Board Resolution No. 2012-0029, para. 4.5.2.2.)

Water Code section 1701.4 provides that if a petitioner fails to timely provide any supplemental information requested pursuant to section 1701.3, then the Board "shall cancel" the petition, unless the Board allows additional time for good cause. The Protestants argue that DWR failed to submit the supplemental information requested by the AHO by the January 21, 2025 deadline, DWR has not shown good cause for additional time, and therefore the change petitions must be canceled. The AHO has already determined, however, that DWR should be allowed until May 27, 2025, to submit the supplemental information.⁴ Moreover, I have reviewed the relevant record of the proceeding as it concerns the AHO's supplemental information request to DWR, including the Presiding Hearing Officer's procedural rulings and the two motions to cancel the water right change petitions. Under the circumstances, I find that there was good cause to extend the applicable deadline. There is adequate evidence in the record that the scope and scale of effort required to compile the required information into an appropriate format exceeds what DWR anticipated at the time it committed to providing

² The Protestants are Buena Vista Rancheria of Me-Wuk Indians, Shingle Springs Band of Miwok Indians, Winnemem Wintu Tribe, Little Manila Rising, Restore the Delta, San Francisco Baykeeper, California Indian Environmental Alliance, Golden State Salmon Association, California Sportfishing Protection Alliance, Sierra Club California, Center for Biological Diversity, North Coast Rivers Alliance, Planning and Conservation League, Friends of the River, Save California Salmon, and California Water Impact Network.

³ The State Water Board has established separate teams for purposes of action on the water right change petitions for the DCP and action on the application for water quality certification that DWR is expected to file for the project. The Chief Deputy Director who oversees water rights has been delegated authority to act on the application for water quality certification and is subject to the prohibition against ex parte communications concerning issues in the hearing on the change petitions. (July 31, 2024 Notice of Public Hearing, pp. 11-12.)

⁴ During the hearing on February 18, the hearing officer expressed her concern about the efficacy of canceling DWR's petitions. In an exchange with Mr. Cho, representing North Delta Water Agency, she explained that even if the petitions were canceled, they would probably be refiled and renoticed once the DWR submits the supplemental information in May. (2025-02-18 Court Reporter's Transcript, p. 129:9-17.)

April 11, 2025

it. It also appears that it was necessary for the Presiding Hearing Officer to provide additional clarity regarding the information being requested, as well as the necessity that it be provided as part of the record for the water right change petition proceeding, specifically. Accordingly, cancelation of the petitions under Water Code section 1701.4 is neither warranted nor required.

In their motion, Protestants also assert that they will be prejudiced by the AHO's extension of the deadline to submit the supplemental information because the information will not be available to them before DWR's case-in-chief begins. The Presiding Hearing Officer has directed that the information be provided well before the protestants' cases-in-chief are due, and she has further directed DWR to make persons most knowledgeable available for cross-examination after all parties have had sufficient time to review the supplemental information. Moreover, issues concerning the fairness of the hearing process should be addressed to the Presiding Hearing Officer, and, in this case, she has already considered and rejected requests to delay the presentation of DWR's case-in-chief. (February 28, 2025 Third Amended Notice of Public Hearing and Procedural Ruling, pp. 9-11.)

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Ekdahl", with a long, sweeping horizontal line extending to the right.

Erik Ekdahl
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